

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

MICHAEL KRAMM

PLAINTIFF

V.

CIVIL ACTION NO.4:08CV104-WAP-JAD

ALFONZO RICKS, et al.

DEFENDANTS

REPORT AND RECOMMENDATION

On December 3, 2008, plaintiff, an inmate of the Mississippi Department of Corrections, appeared before the court for a hearing via video conference pursuant to *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985) to determine if there exists a justiciable basis for his claim filed pursuant to 42 U.S.C. §1983.

Kramm was issued an RVR(Rules Violation Report) for refusing to give a urine sample. Kramm alleges that he has a medical condition which kept him from providing the sample, but alleges that a sample was obtained by a nurse the next morning which tested clean. He was found guilty of the RVR at the hearing and refused the right to call the nurse as a witness. Ricks handled the disciplinary hearing. Neither of the other defendants, Arthur Smith nor James Gilliom had any personal involvement in the way the disciplinary hearing was held. Because they had no personal involvement they have no potential liability to Kramm. *Monell v. Department of Social Services*, 436, U.S. 658, 98 S. Ct. 2018, 56 l. Ed. 611(1978).

Accordingly it is recommended that Arthur Smith and James Gilliom be dismissed with prejudice.

The parties are referred to 28 U.S.C. 636(b)(1) and Local Rule 72.1(C) for the appropriate procedure in the event any party desires to file objections to these findings and recommendations. Objections are required to be in writing and must be filed within ten days of this date. Failure to file

written objections to the proposed finding and recommendations contained in this report within ten days from the date of filing will bar an aggrieved party from challenging on appeal both the proposed factual findings and the proposed legal conclusions accepted by the district court *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

Plaintiff is directed to acknowledge receipt of this report and recommendation by signing the enclosed acknowledgment form and returning it to the court within ten days of this date. Plaintiff is warned that failure to comply with the requirements of this paragraph may lead to the dismissal of this lawsuit under F.R.Civ.P. 41(b) for failure to prosecute and for failure to comply with an order of the court.

This the 4th day of December, 2008.

/s/ JERRY A. DAVIS
UNITED STATES MAGISTRATE JUDGE